

Forest Service, USDA

§ 228.45

National Forest lands within specific areas, under stipulated conditions, and for a specified period of time.

Single entry source. A source of mineral materials which is expected to be depleted under a single contract or permit or which is reserved for Forest Service use.

Unpatented mining claim. A lode or placer mining claim or a millsite located under the General Mining Law of 1872, as amended (30 U.S.C. 21–54), for which a patent under 30 U.S.C. 29 and regulations of the Department of the Interior has not been issued.

Withdrawn National Forest lands. National Forest System lands segregated or otherwise withheld from settlement, sale, location, or entry under some or all of all of the general land laws (43 U.S.C. 1714).

[49 FR 29784, July 24, 1984, as amended at 55 FR 51706, Dec. 17, 1990]

§ 228.43 Policy governing disposal.

(a) *General.* Forest Service policy is to make mineral materials on National Forest lands available to the public and to local, State, and Federal government agencies where reasonable protection of, or mitigation of effects on, other resources is assured, and where removal is not prohibited.

(1) A contract or permit limits processing of the mineral material onsite to the first salable product.

(2) Additional onsite processing may be authorized by a separate permit (36 CFR 251.50).

(3) The authorized officer must ensure that an environmental analysis is conducted for all planned disposals of mineral materials.

(4) Decisions to authorize the disposal of mineral materials must conform to approved land and resource management plans (36 CFR 219.22).

(b) *Price.* Mineral materials may not be sold for less than the appraised value. The authorized officer may assess a fee to cover costs of issuing and administering a contract or permit.

(c) *Conservation.* Adequate measures must be taken to protect, and minimize damage to the environment. Mineral materials may be disposed of only if the authorized officer determines that the disposal is not detrimental to the public interest.

(d) *Ownership.* Title to the mineral materials vests in the purchaser or permittee immediately before excavation, subject to the provisions of §§ 228.47 through 228.56 and other provisions of the contract or permit. Title to excavated material not removed within the time provided reverts in the United States.

(e) *Decisions.* All decisions as to whether or not to grant disposals proposed under this subpart shall be made in writing by the authorized officer. Such decisions must specify their factual and legal basis.

(f) *Option for mining claimants.* All mining claimants holding mining claims which are located for a mineral classified in accordance with this subpart as a mineral material have the option of maintaining that the mineral is locatable and filing for patent. All mining claimants holding mining claims located in good faith on or before January 16, 1991, for a mineral classified in accordance with this subpart as a mineral material may accept the classification and, if appropriate, receive a sale by negotiated contract for that mineral material under 36 CFR 228.57(b)(2) of this subpart.

[49 FR 29784, July 24, 1984, as amended at 55 FR 51706, Dec. 17, 1990]

§ 228.44 Disposal on existing Federal leased areas.

Mineral material contracts or permits may be issued within existing areas leased or under permit under the 1920 Mineral Leasing Act, as amended (30 U.S.C. 181–187); section 402 of Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); the 1947 Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351 *et seq.*); and the 1970 Geothermal Steam Act (30 U.S.C. 1001–1025), provided that it has been determined that removal will neither endanger nor unreasonably interfere with lease operations, and provided further that the lease terms do not prohibit disposal.

§ 228.45 Qualifications of applicants.

The authorized officer may require applicants for prospecting permits, negotiated contracts, or free-use permits or bidders for the sale of mineral materials to furnish information necessary

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to determine their ability to perform the obligations of the contract or permit.

§ 228.46 Application of other laws and regulations.

All mining operations for removal of mineral materials from National Forest lands must meet or exceed applicable Federal standards for the protection of public safety, health, and the environment, and must also meet or exceed State and local standards for the protection of public safety, health, and the environment, to the extent that such standards are not in conflict with Federal purposes and functions.

GENERAL PROVISIONS

§ 228.47 General terms and conditions of contracts and permits.

(a) *Disposal of designated mineral materials.* Only those specified mineral materials found within the area designated in the contract or permit may be extracted and removed.

(b) *Unauthorized removal (trespass) of mineral materials.* The removal of mineral materials from National Forest lands, except when authorized in accordance with applicable law and regulations of the Department of Agriculture, is prohibited (36 CFR 261.9).

(c) *Conservation.* Mineral material contracts and permits must contain provisions to ensure the efficient removal and conservation of the mineral material.

(d) *Improvements.* Contracts and permits must contain provisions for removal or Government retention of improvements.

(e) *Use of existing National Forest development roads.* The authorized officer may require purchasers and permittees to obtain appropriate road-use permits, make deposits for or perform their commensurate share of road maintenance, and comply with road-use rules contained in 36 CFR part 212, depending upon their planned extent of road use.

(f) *Reclamation.* Requirements for reclamation of areas disturbed by mineral material operations must be included in contracts and permits, except for disposals from community sites and common-use areas.

36 CFR Ch. II (7–1–12 Edition)

§ 228.48 Appraisal and measurement.

(a) *Appraisal.* All mineral materials for sale must be appraised to determine fair market value. Appraisals must be based on knowledge of the extent of the deposit, quality of material, and economic value. A sale must not be made at less than the appraised value which may be expressed as either price per cubic yard or weight equivalent. In all cases the units of measurement must correspond to the units used in the appraisal. The authorized officer must estimate and record the amount and value of minerals to be disposed of by free-use permit.

(b) *Measurement.* The amount of mineral material actually removed may be measured by volume, weight, truck tally, by combination of these methods, or by such other form of measurement as the authorized officer determines to be appropriate and in the public interest.

§ 228.49 Reappraisal.

If an extension of time is granted as provided in § 228.53(b), the authorized officer must reappraise or reestimate the mineral materials covered by the contract or permit and which remain unexcavated at the time of extension. The recalculated unit value becomes the new unit value for the remaining unexcavated material; excavated and stockpiled material is not subject to reappraisal.

§ 228.50 Production records.

At least annually, the purchaser or permittee must furnish a record of the volume extracted, in cubic yards or weight equivalent, to the authorized officer. The units of measurement must correspond to the units used in the appraisal or estimate.

§ 228.51 Bonding.

(a) *Bond requirements.* Before operations may begin under any contract or permit, a bond must be furnished to the authorized officer to ensure performance of payment (as necessary), reclamation, and other conditions of the contract or permit, except as noted in paragraphs (a) (1) and (3) of this section, where the authorized officer may waive such bonding. If an extension of